Gulf of Maine Harbor Porpoise Take Reduction Team
December 12-13, 2000

Final Meeting Summary and Take Reduction Team Recommendations

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MEETING SUMMARY
GULF OF MAINE HARBOR PORPOISE TAKE REDUCTION TEAM
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Agenda Item 1 -- Welcome and Meeting Objectives

Chris Mantzaris of the National Marine Fisheries Service (NMFS) Northeast Regional Office welcomed all the participants[1] and stated that the results of the 1999 bycatch analysis are encouraging. The harbor porpoise take was less than the Potential Biological Removal (PBR) level; therefore, the short-term goal has apparently been reached. In addition, based on recent survey data, the PBR will increase. However, now that we are in a good position with regard to the short-term PBR goal, we need to focus on strengthening the plan to work toward the long-term Zero Mortality Rate Goal (ZMRG).

Mr. Mantzaris indicated that it will not be possible to develop and implement a plan that will reduce harbor porpoise bycatch to the Zero Mortality Rate Goal (ZMRG) by the statutory goal of April 30, 2001. Instead, NMFS is proposing a target date of December 2, 2003, another statutory goal which is five years from the date of implementation of the Harbor Porpoise Take Reduction Plan (HPTRP or Plan) final rule. Although NMFS has not yet finalized its definition of ZMRG, the interim proposal is 10% of PBR. Until there is a final definition, it was suggested that the TRT focus its deliberation on the development of recommendations[2] that would continue the progress in further reducing mortality and serious injury in general.

Mr. Mantzaris noted that, despite the progress thus far, there are some areas of concern with regard to harbor porpoise bycatch that should be addressed by the TRT. There have been a number of compliance problems, and bycatch has been observed in new areas, suggesting that Plan modifications are needed. He strongly suggested that the TRT:

- review what has happened with Plan compliance and recommend appropriate changes and
- take proactive steps to formulate additional measures to reduce harbor porpoise take in New England.

He added that fishery management plan (FMP) measures may indeed continue to contribute toward reducing bycatch but cannot be relied upon for the long term because they change regularly. In addition, despite significant fishing effort reduction in New England in the first part of 2000, the bycatch for the area was the same as for that period in 1999. One option may be to revisit the TRT s original strategy of a stand-alone set of measures under the Marine Mammal Protection Act (MMPA). However, if a consensus is not reached on additional measures, and if

[1] A list of meeting participants is included in Attachment A.

[2] The Team s recommendations from this meeting are included with full justification in the body of the meeting summary and in condensed form in Attachment C.

it becomes critical to institute new measures, the agency will be obligated to examine the information available and use its discretion to take further steps.

TRT members asked NMFS what time frame the agency was considering for developing a proposed rule to modify the HPTRP. Mr. Mantzaris responded that a one-year time line was being considered.

Agenda Item 2 -- Review of Agenda: Process Groundrules

Alana Knaster, facilitator, distributed a draft outline of meeting topics and reviewed the agenda. It was proposed that a discussion of the relationship between expansion of certain fisheries and potential affects on the health of the harbor porpoise population should be included under Item 4 of the agenda.

Alana informed the team that the groundrules were revised to reflect a change in the role of the TRT (*i.e.*, from the first phase of developing an initial Plan to the current role of reviewing progress and implementation) and to clarify the role of alternates for TRT members.

Agenda Item 3 -- Harbor Porpoise Population Status and Effectiveness of Current Take Reduction Measures

A. Stock Assessment Report and Scientific Review Group (SRG) Recommendations

Debra Palka of the NMFS Northeast Fisheries Science Center (NEFSC) discussed the current status of the Gulf of Maine/Bay of Fundy harbor porpoise stock. (See the handout[3] entitled Overview of Harbor Porpoise Stock Assessment .) In 1999, data was collected from both air and ship surveys. Dr. Palka noted the rise in the estimated abundance (89,700) and resulting change in PBR (from 483 to 747). However, she added that the increase did not indicate enormous growth. Rather, the increase was due to the fact that areas were surveyed in 1999 that had not previously been surveyed. Therefore, additional surveys are necessary over time to investigate whether there is an upward trend. (The next survey would be approximately 2002.)

Strandings

There were 243 strandings in 1999 but only 24 in 2000 as of October 31. Most of the strandings occurred in the Mid-Atlantic region. The SRG, at its meeting in November 2000, briefly considered several approaches for handling stranding data but could not agree on how stranding records with evidence of fishery interactions should be used in the bycatch estimates. At this

[3]A list of background materials is provided in Attachment B.

time, the approach the NEFSC is considering is that records with definitive evidence of fishery interaction, but for which no specific fishery can be identified, would be assigned to an unknown fishery. The stranding records with positive evidence of fishery interaction would be included in the mortality estimate, but would not be extrapolated based upon fishing effort. Using this approach, there would be 19 fishery interaction strandings from 1999 assigned to an unknown fishery and added together with other incidental take data, primarily observer data.

Stock structure

Dr. Palka summarized the findings of recent genetics research presented in a paper by Dr. Patricia Rosel of the NMFS Southeast Fisheries Science Center. The research demonstrates that harbor porpoises in the Mid-Atlantic are not all from the Gulf of Maine/ Bay of Fundy stock. Some of the animals are apparently from the Greenland stock and some from the Gulf of St. Lawrence stock, while others are from an as-yet unidentified population. The data is based upon samples from only 41 stranded animals, which is too small a sample size to reach definitive conclusions. Currently, scientists are analyzing samples from 145 animals with evidence of fishery interactions to determine their stock structure. This information will be valuable in helping to determine whether there are different stocks using the Mid-Atlantic on a regular basis and interacting with Mid-Atlantic fisheries -- as well as how this might change the PBR. For the present, NMFS will continue to assume that all animals caught in U.S. waters are part of the Gulf of Maine/Bay of Fundy (GOM/BOF) stock.

The TRT discussed the perception of changing dynamics of the harbor porpoise population on the part of the fishing industry. TRT members raised the issue of the carrying capacity of the habitat for the porpoise population and how this would affect the classification of the GOM/BOF stock as strategic. There was concern that there had been a change in harbor porpoise behavior in recent years which could be related to the expansion of the Atlantic herring fishery. Because herring is an important prey item for harbor porpoise in New England, there is a potential both for take and for ecosystem effects resulting from operation of the fishery. Dr. Palka responded that the strategic classification of the harbor porpoise stock is reviewed regularly by NMFS and the SRG when the latest data on abundance and mortality are considered during the stock assessment process. At this point, there is insufficient information to reclassify the harbor porpoise stock.

B. Take Analysis for 1999 and Partial 2000

Marjorie Rossman of the NEFSC presented the full-year 1999 and partial 2000 bycatch analyses, including available information on observer coverage and fishing effort. A summary of Ms. Rossman s presentation is provided below. [See the handouts entitled Overview of Harbor Porpoise Stock Assessment , Preliminary Winter (Jan-May) 2000 Harbor Porpoise Bycatch Estimates for the Northeast Sink Gillnet Fishery by Season/Port Group-Area/Closure , and Pingered vs. Non-pingered By-Catch Rates for more detail.]

For 1999, the NEFSC estimates that there were 270 (CV=0.28) harbor porpoise taken in the Northeast sink gillnet fishery, 53 (CV=0.49) in the Mid-Atlantic coastal gillnet fishery, and 20 (CV=unknown) in the Canadian sink gillnet fishery. The TRT noted that the cumulative human-caused porpoise mortality for 1999, including the stranding data discussed above and opportunistic reports from the Canadian herring weir fishery, was less than both the old and new PBRs.

Thus far in 2000, bycatch was observed in the Northeast sink gillnet fishery, Mid-Atlantic coastal gillnet fishery, and Canadian sink gillnet fishery. Since the data for all months of 2000 were not available at the time of this meeting, Ms. Rossman focused on the winter seasonal analysis in presenting these data.

The NEFSC estimates that 143 (CV=0.57) harbor porpoise were taken in the Northeast sink gillnet fishery in Winter (January-May) 2000. During Winter 2000, one harbor porpoise was observed taken in the Mid-Atlantic coastal gillnet fishery, but an extrapolated estimate could not be prepared at this time for this fishery/season because state effort data are not available until after the end of the year.

No bycatch was observed during Summer (June-August) 2000 in either the Northeast or Mid-Atlantic gillnet fisheries.

To date during the Fall (September-December) 2000 season, there were 8 harbor porpoises observed taken. These takes occurred in November in the Northeast sink gillnet fishery. Of the 8 takes, 6 were taken within the Midcoast area during the time when pingers were required, and 2 were taken within the year-round Western Gulf of Maine groundfish closure, where fishing with sink gillnet gear was prohibited regardless of pinger use. Three of the observed takes occurred in two hauls which involved nets that were not appropriately equipped with pingers. Thus there was non-compliance with both the HPTRP pinger requirements and the groundfish FMP closure regulations within this fishery.

Ms. Rossman noted that only dedicated marine mammal trips are used to generate bycatch mortality rates. The South Cape port-group stratum had a total of 5 observed harbor porpoise takes in Winter 2000, only 1 of which was observed on a dedicated marine mammal trip. Since the non-dedicated haul takes occurred in the same time and area as dedicated marine mammal hauls, they are assumed to be represented in the total mortality estimate for this stratum which is based on the rate calculated from the 1 observed take on the dedicated mammal trip.

Approximately 90% of trips in recent years were mammal trips (on-watch) and 10% were fish trips (off-watch). TRT members suggested that NMFS re-examine whether it was possible to develop a correction factor for the off-watch hauls so that these could also be extrapolated, thereby minimizing the potential negative bias in the off-watch data.

Ms. Rossman noted that there was no observed bycatch in the South Cape Closure stratum or the

Offshore stratum in 2000, which represents a decrease in these areas from the 1999 level. However, bycatch increased in the South of Boston port group stratum, South Cape port-group stratum, and Midcoast closure stratum from 0 animals in Winter 1999 for all three areas to 14 (CV=1.00), 112 (CV=0.70), and 17 (CV=1.07) animals, respectively, in Winter 2000.

TRT members asked questions about the amount of observer coverage in the closure areas. Ms. Rossman responded that overall coverage has been good. Coverage during Winter 1999 was approximately 3%, and coverage during Winter 2000 was 5.5%. The increase in coverage during Winter 2000 appears to be related to a reduction in fishing effort. However, the Midcoast closure area during Winter 1999 and the South Cape port-group stratum during Winter 1999 and Winter 2000 were not covered well. The team then asked how decisions are made concerning the amount of observer coverage. Ms. Rossman stated that the previous year s landings are used to develop the next year s coverage; there is a lag time of one year. Although observer coverage jumped from 3% in 1999 to 6% in 2000, it was suggested that more observer coverage be provided for the South Cape port stratum. In response to questions about compliance with the requirement to carry observers, NMFS staff replied that this has improved over time, but that there are still fishermen who do not cooperate.

Based upon the information presented, the TRT made the following recommendations pertaining to the observer program:

A. Reiteration of TRT recommendations from the December 14-15, 1999, meeting

- *When there is a take of a harbor porpoise, observers should check whether pingers are functioning on both sides of the actual take. This requirement should be included in observer protocols.*

- *To determine the proportion of deployed pingers, if any, that are not functioning, observers should randomly select a string and sample every pinger on that string. This should be accomplished without hindering operation of the vessel. This requirement should be incorporated into the observer protocol as well. NMFS should provide notice of the change in protocol to gillnetters.*

B. Recommendations for the 2001 Fishing Season

- *To determine the representativeness of the observer program for the Northeast sink gillnet fishery, NMFS should determine what proportion of all active gillnet vessels are observed each year. This should be done by comparing the list of vessels reporting using sink gillnets in the vessel trip report (VTR) system with the list of vessels observed each year. This would also function as a partial check of the validity of the VTR system.*

- *The TRT requests that NMFS prepare a report on the number of observed vessels relative to the number of boats known to be in the Northeast sink gillnet fishery and report this*

information back to the TRT. Information should be included on the number of vessels deemed unsuitable for observer coverage for safety or other reasons.

" *Of those vessels suitable for observer coverage, those which were not observed in previous years should be prioritized for coverage in the subsequent year while keeping the selection protocol as random as practical.*

Team members questioned how many observed hauls were pingered vs. those with no pingers in the closure areas. Forty percent of the hauls observed in the South Cape area were not in compliance with the pinger regulations. In the offshore area, 68% of hauls observed were non-compliant. In the Massachusetts Bay area, 16% observed hauls were unpingered, and in the Midcoast area, 9% were unpingered. This data prompted several questions concerning the functioning of pingers, habituation of harbor porpoise to pingers, and non-compliance concerning use of pingers. These are important questions to answer because the fall season shows a trend of increasing rate of bycatch during the last three years.

In response to this presentation, TRT members concurred that non-compliance was a serious issue which needs to be addressed. They added that they believed there was a strong connection between the rate of non-compliance and the lack of enforcement. The TRT appointed a subgroup to develop recommendations regarding how to address this ongoing problem. (See the summary of discussion on Agenda Item 5C below for TRT recommendations on this issue.)

The fishermen expressed concern about how data is obtained to compile the take analysis reports. Ms. Rossman indicated that both the VTR data, which is submitted by the fishermen, and dealer-reported landings data are used in the analysis of bycatch. The total catch (effort) reported by the dealers is prorated to specific areas (*i.e.*, closure and port-group strata) using the data reported by the fishermen in the VTRs. This is necessary because the dealer-reported landings do not specify the area fished, so this information must be obtained from the VTRs. Thus, the vessel logbooks alone do not provide a measure of effort that is complete across the entire fishery. The dealer-reported landings are representative of the total fish catch across the entire sink gillnet fleet. Chris Mantzaris pointed out that all available information is utilized. The fishermen questioned the accuracy of some of the VTR data and suggested that it would be appropriate for the Team to make some recommendations regarding how to better collect and utilize VTR data. (See the summary of discussion on Agenda Item 5D below for TRT recommendations on this issue.)

C. Mid-Atlantic TRT Recommendations

The Mid-Atlantic Take Reduction Team (MATRT) met the last week in November 2000. Alana Knaster summarized the MATRT recommendations, noting that the recommendation regarding reflective netting had been referred to the GOMTRT to consider and implement. The recommendations include the following:

" Improve coordination of FMP closures with TRP closures.
" Increase observer coverage.

- GOMTRT should look at reflective nets as a potential measure to reduce harbor porpoise bycatch.
- Form a subgroup to explore outside funding for experiments (*e.g.*, use of reflective netting).
- Institute education and outreach workshops for fishermen to keep them informed when there is a harbor porpoise take so they can be more proactive.
- Provide the opportunity for early input by the MATRT on NMFS draft regulations and any proposed changes to the TRP.

Agenda Item 4 - - Other Plans that Interface with the Harbor Porpoise TRP

Federal Dogfish FMP - Pat Fiorelli reported that the dogfish fishery is now closed for the season in federal waters because the quota has been reached. It will open April 30, 2001, with certain specifications which at this point are unclear. This closure does not apply to vessels in state waters with a state permit.

Interstate Dogfish Actions - The Atlantic States Marine Fisheries Commission (ASMFC) closed all State waters to dogfish fishing by emergency action on October 15, 2000, for 180 days. The ASMFC will develop a fishery management plan for state waters for dogfish.

Federal Monkfish FMP - The monkfish plan was implemented November 8, 1999, and is in its second year. The same measures will be in place for the 2001 fishing year. There will be no directed fishery in Year 4 or afterward if the regulation remains as currently written. The northern fishery management area has different measures from the south. The north has no trip limit, but the vessel must be fishing for groundfish. Vessels must declare whether they are fishing in the northern or southern area. There is a mandatory 20-day block of time out during spawning season and a cap on number of nets (160). Trips are very limited in the south; therefore, some vessels are coming to fish for monkfish in the northern area.

Federal Multispecies FMP - Under the Multispecies FMP, gillnet vessels are subject to a series of staggered closures between January and June in the Gulf of Maine.

Team members commented that working quotas by trip limits may cause more potential to interact with marine mammals. The monkfish plan may be endangering the harbor porpoise. Chris Mantzaris responded that NMFS would like to have the team consider having the HPTRP stand alone without relying on FMP closures. This could entail considering a number of different/additional closures. (See Agenda Item 5E below for further team discussion.)

Because of time limitations, the TRT deferred presentations on other plans that interface with the Harbor Porpoise TRP.

Agenda Item 5 -- Status of the 1999 Recommendations

A. Gear Development and Mitigation Alternatives.

Norm Holy, who is collaborating with TRT member Don King, provided an overview on the evolution of the technology that goes into perfecting a reflective net that will deter marine mammals from interacting with fishing gear. He commented on the nature of the materials, additives used to increase the ability of mammals to detect the nets, and the cost. There are a number of parameters pertaining to the ability to catch fish (*e.g.*, strength, flexibility) that are also a factor. With perhaps some additional laboratory work, it would be appropriate to conduct some additional studies to increase our knowledge of the viability of this product as a harbor porpoise bycatch reduction tool.

Ed Trippel of the Canada Department of Fisheries and Oceans St. Andrew s laboratory made a presentation to the Team on recent experiments in Canada and Denmark testing the efficacy of reflective netting. In Denmark, the technology was effective in reducing takes; however, there was some reduction in cod catch. In Canada, there were no harbor porpoise takes, and there was reduced take of birds. Fishing was not negatively affected either. Dr. Trippel provided a handout entitled Field Testing of Acoustic Reflective Gillnets in the Bay of Fundy: Potential Mitigative Tool to Reduce Harbor Porpoise By-Catch .

The TRT discussed the need to conduct two experiments – the first to test whether reflective nets affected fishing success, and the second to test the efficacy in reducing harbor porpoise bycatch. They also considered several options other than conducting an experimental fishery that would enable a study to proceed more expeditiously. The TRT reached a consensus on the following recommendations pertaining to the scientific experiments:

" *The TRT strongly recommends that a scientific experiment be conducted to compare the efficacy of reflective gillnets with that of standard gillnets equipped with pingers. This experiment should be conducted in an area and time of historically high porpoise bycatch -- such as the mid-coast area in the fall -- and should include the following elements:*
a) a cap on the total mortality of porpoises that is the minimum consistent with a statistically valid result such that the experiment would cease when the cap is reached
b) one hundred percent observer coverage of all hauls by participating vessels
c) acoustical monitoring of both control and experimental net types for porpoise vocalizations[4]
d) surveys for porpoises and other marine mammals in the experimental area[5]
e) regular testing of pingers to ensure function

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[4] Conforms with the concept of a scientific experiment to examine porpoise behavior.

[5] Conforms with the concept of a scientific experiment to examine porpoise behavior.

f) experiment to be conducted under the following constraint: the reflective nets are being tested to determine whether they are of similar effectiveness to existing HPTRP measures. In other words, the nets would be tested against nets equipped with pingers now required by the HPTRP, not against nets with no pingers.

" *In authorizing and/or conducting either the above experiment or an experiment on alternative frequency pingers, NMFS should utilize whatever approach is most expeditious and least burdensome.*

" *Should the above experiment or an experiment on alternative frequency pingers provide sufficient evidence that the modified gear is effective in reducing harbor porpoise bycatch to a degree which is equivalent to or greater than the current pinger requirement in the HPTRP, NMFS should amend the HPTRP in a manner which allows fishermen to choose between conservation-equivalent strategies. This is similar to the approach used in some components of the Whale TRP.*

B. Experimental Fishery Rule

The TRT had recommended conducting an experiment to test higher-frequency pingers and was now considering an experiment regarding reflective netting as well. Kim Thounhurst of the NMFS Northeast Regional Office provided an overview of the current scenario for conducting an experimental fishery with regard to MMPA and FMP regulations.

Previously, all experimental fisheries for harbor porpoise bycatch reduction were conducted under the Magnuson Act, not under the MMPA. Controlled experiments were conducted by private scientists in coordination with fishing industry representatives, not by NMFS, although NMFS did provide some funding.

Ms. Thounhurst emphasized that, in order to set up an experimental fishery under the HPTRP, the plan would have to be amended to allow experimental fisheries. NMFS will consider mirroring the current regulations for experimental fisheries under the FMP regulations, which include a public comment period. Depending on the nature of the experimental activity, an Exempted Fishing Permit (EFP) under the FMP regulations may also be required. NMFS is in the process of working through the regulatory hurdles.

(See 5A above for the Team s recommendations pertaining to the conduct of an experimental fishery.)

C. Enforcement of HPTRP Objectives

Joe Green, NMFS Special Agent for Enforcement, reported that the Coast Guard has scheduled patrols for at-sea enforcement. However, he emphasized that the Coast Guard cannot physically pull up nets. They must request that fishermen pull the nets. If they board when the nets are

pulled, they can check to see if the number of pingers is sufficient. He added that once there is a device that can be used to test if pingers are functioning, this would be an important tool for enforcement.

The TRT questioned if observers checked the functioning of pingers when a harbor porpoise is taken. The group felt strongly that it is important to test the pingers that lie on the net directly before and after the take.

David Potter of the NEFSC presented the work that had been completed to date in developing an on-deck pinger tester that could be used by observers, fishermen, or enforcement personnel to check whether pingers were functioning. He indicated that the development process has been slow, but that a prototype appears ready to be produced for agency use. The current projection is that the parts for the device would cost about $400, with the final cost being around $500. Unlike the mass produced tester whose sound is difficult to detect and is not particularly durable, the device developed under the NMFS contract is more reliable and will have a visual indicator.

The TRT reiterated its support for the use of a tester as reflected in its recommendations regarding the observer program (included under Agenda Item 3).

Mr. Potter also noted that the Airmar Technology Corporation in New Hampshire is still interested in getting into the pinger business. They are planning to produce both a 10 kHz and a 47 kHz pinger.

Meggan Engelke-Ros, an attorney with the NOAA General Counsel s Office of Enforcement and Litigation, discussed several of the actions that had been taken this year to enforce the HPTRP regulations. There have been two pinger cases based upon Coast Guard boardings in Southern New England -- one in 1999 and one in 2000. The 1999 case has been concluded and was published in the most recent issue of *Commercial Fisheries News*. The 2000 case is still being reviewed by General Counsel. Since there was no penalty schedule as yet for the HPTRP, General Counsel worked from the one created for the Pacific Offshore Take Reduction Plan in assessing the fine in the 1999 case. This penalty schedule may not be appropriate for the HPTRP, as the fisheries are quite different, and fewer pingers are required than in the Pacific driftnet fisheries. This resulted in a modest fine, in combination with the fact that this was a first offense. NMFS is developing a penalty schedule for the take reduction plans that will take all plans into consideration. Ms. Engelke-Ros noted that aggravating and mitigating circumstances are always considered when applying a given penalty schedule. She also commented that her office would prefer not to use observer data for enforcement, even though there have been enforcement actions in the Pacific based solely upon observer data. This could negatively impact the observer program and could result in a weaker case than one based on a directed enforcement mission.

General Counsel also advised the team that, if one of the objectives is greater enforcement, then consideration should be given to regulations that are more easily enforceable by the U.S. Coast

Guard and NMFS Office of Law Enforcement. Furthermore, feedback received from respondents in the investigation suggests that there is a lot of confusion in the fleet regarding how to use pingers. This confusion is probably affecting the level of compliance, so outreach regarding how to use pingers and why proper use is important (both biologically and with regard to the need for further restrictions) should be considered.

The team renewed its discussion of the need for effective enforcement as a critical element in increasing compliance. Fishermen stressed that, unless there is the threat of meaningful enforcement, compliance will most likely continue to decline. Enforcement presence at sea is an effective deterrent to non-compliance, and publicizing cases that are made is also important. The TRT discussed a number of options and thoroughly evaluated the efficacy of each in developing their package of recommendations. Issues included 1) establishing tough monetary penalties; 2) significantly increasing the number of at-sea boardings by the Coast Guard as well as by NMFS enforcement agents and deputized state agents; 3) imposing new requirements for permits that would involve annual certification of fishermen and their gear, including testing whether pingers were functioning before fishing could commence in a restricted area; 4) requiring pingers on all nets during fishing operations; 5) relying only on complete closures and eliminating the ability to use pingers to fish in these areas; and 6) using observer data for enforcement purposes.

The Team believes that it is critical to ongoing and future efforts to reduce harbor porpoise bycatch for NMFS to make at-sea enforcement a top priority and to direct its resources, both personnel and budgetary, towards this priority. The TRT recommends the following measures to improve enforcement of and compliance with HPTRP regulations:

> **It is a strongly held view and the consensus of the TRT that efforts to implement its at-sea enforcement recommendations must take precedence over the other measures recommended by the TRT.**

A. At-Sea Enforcement

The TRT recommends that NMFS implement an enhanced enforcement program that would incorporate the following steps and elements:

1. NMFS should determine, by whatever means possible, where compliance problems exist in the fishery and the degree of non-compliance.

2. NMFS should not use observer data to identify individual violators, but should use aggregate observer data to target general areas where compliance is a problem for random at-sea enforcement activity.

3. NMFS and the states should establish cooperative agreements involving appropriate authorization and funding for conducting HPTRP-related enforcement actions where such agreements are not already in place. This should include deputizing state officers in federal

waters.

4. NMFS should continue to work with the Coast Guard and the States to develop an enforcement plan that makes the level of enforcement for marine mammal inspections equal to that for fisheries inspections and establishes a specific marine mammal enforcement program. The plan should be developed and implemented in 2001. NMFS-authorized enforcement staff should report back annually to the TRT on the number of boardings, investigations, and penalties imposed.

5. NMFS authorized enforcement staff should board boats at sea and inspect for compliance with the requirement to utilize pingers while fishing and to test whether pingers are functioning (once the appropriate device is available for use by enforcement personnel).

B. Penalties

The TRT recommends that NMFS and NOAA General Counsel continue to develop a graduated schedule of penalties of sufficient gravity to deter non-compliance for all components of the TRP. Prior to its implementation, NMFS should provide drafts of this schedule to the TRT for its review. Penalties imposed for violations of the HPTRP regulations could include revocation of the Marine Mammal Authorization Program (MMAP) certificates, fines up to $25,000, and/or forfeiture of catch.

C. Notification of the Fishing Industry Regarding Non-Compliance

The TRT recommends that NMFS notify permit holders about issues of non-compliance. This communication should be accomplished through a series of letters. The general content of the letters would be as follows:

First letter: Compliance in closure areas requiring pingers is a problem.
Second letter: Observers may now be testing pingers to find out if they are working and will be able to test pingers as a courtesy to fishermen. Fishermen will also be informed that enforcement personnel may have appropriate devices for testing pinger functioning.
Third letter: Describe the current level of compliance with the requirement to take observers and include admonishment in support of future cooperation.

D. Certification

The TRT recommends that NMFS, in cooperation with the States, establish an annual certification program for fishermen and their gear. This certification program should include the following elements:

1. A restructuring of the existing pinger training and certification requirements to require an annual renewal of certification, as described below, prior to fishing in an HPTRP restricted area

rather than the one-time authorization now required by the HPTRP. A schedule for certification will be developed. Sufficient time should be provided to fishermen to enable them to access the program prior to fishing in an HPTRP restricted area.

2. Gillnet fishing in HPTRP restricted areas would be prohibited unless permittees and their gear are certified. Certification would require that gillnetters, in accordance with the regulations, would a) present their pingers for testing and certification at areas to be determined by the States in cooperation with NMFS and b) obtain a certificate of compliance which must be maintained aboard the vessel when fishing in HPTRP restricted areas.

3. NMFS, in conjunction with the States, would include an outreach component as part of the certification program.

4. Access to the database for this certification program should be provided to State agencies and enforcement authorities for their use in assisting NMFS with implementing the HPTRP.

The Team emphasized that NMFS should not wait to implement the recommendations regarding at-sea enforcement until after it has instituted the certification program recommended above.

D. Bycatch Analysis and Fishing Effort Data

Kelly McGrath of the NMFS Fishery Statistics Office presented an update on NMFS efforts to improve all aspects of fishing effort reporting through the Data-validation Pilot Project , Data Quality Improvement Initiative , and auditing of past and current data. The first project involved providing a subset of dealers and vessels with the opportunity to review and validate their own data contained in the NMFS databases, which enabled NMFS to correct the data sets and identify problem reporting areas. The validation project will be expanded to include additional fisheries in 2001. The second project, implemented in June 2000, is a multi-part process focused on identifying and resolving reporting problems; increasing industry feedback and outreach via phone and mail; and returning incomplete, inaccurate, or illegible reports to the submitter for corrections. Additionally, NMFS continues to perform detailed audits of past and current data to improve the overall quality of the data. There is also an Atlantic Coastal Cooperative Statistics Program(ACCSP) effort which will result in improved coordination of data collection among the states and NMFS. The parties working on the ACCSP are trying to identify the key characteristics that have been missing on the forms to distinguish fleets.

Fishing industry representatives responded that this process appears to be too cumbersome to succeed. One needs to address both the dealer data and fishermen-supplied data. The process of recording the number of nets on VTR data is flawed. Fishermen questioned why after all of these years of accepting poor-quality data, NMFS is now returning reports to the industry for correction.

To assist in expediting the development of acceptable forms, several members proposed the

establishment of a subgroup to assist NMFS in this effort. Bill Mackintosh agreed to coordinate input from fishermen on the group. State representatives from Maine, Massachusetts, and Rhode Island agreed to assist as well. The consensus recommendations of the TRT are as follows:

" *The TRT will form a subcommittee which will review the current procedures and plans for mandatory fishing effort data reporting in the Atlantic Coastal Cooperative Statistics Program (ACCSP) relative to HPTRP needs. This subgroup will include industry TRT members and other appropriate staff from NMFS, the States, and the Atlantic States Marine Fisheries Commission (ASMFC). After reviewing the current status, the subcommittee will make recommendations to the TRT on measures which might improve the utility of the data for monitoring the HPTRP. The subgroup will provide a report of its recommendations, including potential changes to fishing vessel logbook forms, to the HPTRP Coordinator for distribution to the TRT. NMFS will circulate a draft of any new report forms designed by the subgroup to obtain TRT input prior to implementation.*

E. NMFS/Council Coordination

The TRT discussed the issues raised by Chris Mantzaris in his opening remarks regarding the meeting objectives. Mr. Mantzaris noted that the Western GOM closure is due to sunset in April 2002 unless revised. The date of the next TRT meeting is uncertain. NMFS will make every effort to involve the TRT in decision making with regard to the HPTRP. However, it may be necessary to request input from the TRT prior to a meeting on whether it favors the continued closure of the area to gillnet gear or whether fishing with pingers should be allowed. Chris reiterated his suggestion that all FMP closures currently in effect be incorporated into the take reduction plan under the MMPA. The Team acknowledged that this proposal merited TRT consideration, but did not think that they had the time or detailed enough information to make specific recommendations during this meeting.

The TRT also revisited some suggestions made earlier by Debra Palka regarding options for expanding current closure areas to incorporate areas that are not covered under the HPTRP, but in which takes have recently been observed. The Team requested that NMFS provide input to the TRT regarding some specific proposals for future consideration as follows:

" *Based on the January-May 2000 harbor porpoise bycatch rate, the TRT recommends that NMFS evaluate moving the southern boundary of the South of Cape Cod Closure area to include areas where there have been observed takes south of the existing boundary line.*

" *Within the next several months, NMFS should prepare for TRT consideration a proposal that would suggest how the appropriate groundfish closures that are currently in effect could be integrated under the single umbrella of the Take Reduction Plan with the current HPTRP regulations as a stand-alone set of regulations under the MMPA. In developing this proposal, NMFS should reconsider each of the HPTRP closure areas one by one, decide the appropriateness of each, i.e., whether it should be retained as is or*

modified to better coincide with harbor porpoise take zones, and consider whether new areas should be added. NMFS should look specifically at the unregulated L-shaped area next to the HPTRP Massachusetts Bay closure to determine whether or not it should be incorporated into an adjacent HPTRP closure area. The proposal prepared for TRT review should be accompanied by a color-coded map that clearly delineates current versus proposed closure areas.

Chris Mantzaris indicated that NMFS should be able to have a proposal for the TRT to consider in four to five months. He would then consider the best approach for progressing discussion on the proposal including whether it would be appropriate to convene the TRT earlier than next year.

Agenda Item 6 -- Team Process Recommendations

Meeting logistics. The TRT discussed its preferences for meeting dates and location. They suggested that March would be a good month for the annual meeting instead of December. NMFS should also consider moving the meeting location to Rhode Island (Providence) or New Hampshire. Alternatively, if the decision is made to have the meeting on the outskirts of Boston, the TRT strongly recommended finding a different hotel with access to restaurants and other amenities.

Executive Committee. The TRT considered the proposal to form an executive committee with representation from each stakeholder interest group, but decided that it would be difficult to empower such a group to make anything other than minor decisions and that NMFS should continue the process in place now of contacting individuals from among the team to get a sense of Team opinion on upcoming issues. They also suggested that conference calls would be appropriate if funding was a concern.

Constructive criticisms and suggestions for future meetings: a) agenda is too long, and there is not enough quality time for each item; b) TRT needs more guidance from the agency so it can be more productive at meetings; c) draft proposals should be circulated in advance; d) a status report compiled quarterly should be circulated in advance; e) presentations should be limited to ten minutes, and presenters should provide an abstract of their conclusions; f) handouts should be coordinated with agenda items.

The meeting adjourned at 6 p.m., December 13.

ATTACHMENT A
Meeting Participants

TRT Members
Erik Anderson
NH Commercial Fishermen s Association
Pat Fiorelli
New England Fishery Mgmt. Council
Jim Gilbert
University of Maine
Pete Inniss
ME Fisherman
Don King
Homeward Bound Twine
Scott Kraus
New England Aquarium
Bill Mackintosh
RI Fisherman
Claire McBane
NH Fish and Game Department
William McCann
MA Fisherman
Dan McKiernan
MA Division of Marine Fisheries
Andy Read
Duke University
Ron Smolowitz
Coonamessett Farm
Terry Stockwell
ME Department of Marine Resources
April Valliere
RI Division of Fish and Wildlife
Nina Young
Center for Marine Conservation
Sharon Young
The Humane Society of the United States

Official Observers
Ed Trippel
DFO St. Andrew s Biological Station

NMFS Attendees
Winnie Chan, *NE Protected Resources*
Peter Christopher, *NE Sustainable Fisheries*
Kevin Collins, *NE General Counsel*
Meggan Engelke-Ros, *GCEL*
Harold Foster, *NE Fisheries Science Center*
Joe Green, *NE Enforcement*
Emily Hanson, *Ofc. of Protected Resources*
Dan Hytrek, *General Counsel Fisheries*
Gregg Lamontagne, *NE Protected Resources*
Chris Mantzaris, *NE Protected Resources*
Kelley McGrath, *NE Statistics*
Debi Palka, *NE Fisheries Science Center*
David Potter, *NE Fisheries Science Center*
Marjorie Rossman, *NE Fisheries Sci. Ctr.*
Glenn Salvador, *NE Protected Resources*
Kim Thounhurst, *NE Protected Resources*

Facilitators
Alana Knaster, *The Mediation Institute*
Dale Schafer, *The Mediation Institute*

Other Attendees
Norm Holy
Chemist/Atlantic Gillnet Supply
Walt Walters
Fumunda Marine Products
Pete Scola
PTSI (Observer Contractor)

ATTACHMENT B
Background Documents Distributed Prior to and During Meeting

- Draft agenda
- Gulf of Maine Harbor Porpoise Take Reduction Team Recommendations for 2001, Draft Outline
- (New England) Harbor Porpoise Take Reduction Team Official Member List
- Gulf of Maine/Bay of Fundy Harbor Porpoise Take Reduction Team Organizational Protocols, Final (Resolve)
- Gulf of Maine/Bay of Fundy Harbor Porpoise Take Reduction Team Protocols -- Revised for TRT Consideration (TMI 2000)
- Total Fishery-related Mortality Estimate for the Gulf of Maine/Bay of Fundy Harbor Porpoise Stock During 1999 (NMFS, May 2000)
- October 27, 2000, cover letter to Sharon Young and attached memorandum entitled Preliminary estimates of harbor porpoise bycatch during January-May 2000"
- 2 4th Northeast Regional Stock Assessment Workshop (NMFS, October 1997)
- Gulf of Maine Harbor Porpoise Harbor Porpoise Take Reduction Team December14-15, 1999, Final Meeting Summary (Resolve 2000)
- Proposed rule to adjust Delaware Bay HPTRP exemption line (65 FR 64415; October 27, 2000)
- Harbor Porpoise Take Reduction Plan Final Rule (63 FR 66464; December 2, 1998)
- Harbor Porpoise Take Reduction Plan Final Rule correction notice (63 FR 71041; December 23, 1998)
- Final MMPA List of Fisheries for 2000 (65 FR 24448; April 26, 2000)
- Draft Harbor Porpoise Stock Assessment Report Chapter (NMFS, September 2000)
- Overview of Harbor Porpoise Stock Assessment (NMFS, November 2000)
- Preliminary Winter (Jan-May) 2000 Harbor Porpoise Bycatch Estimates for the Northeast Sink Gillnet Fishery by Season/Port Group-Area/Closure
- Pingered vs. Non-Pingered By-Catch Rates
- Methodology Used to Estimate By-Catch 1999-2000 (NMFS, November 2000)
- Effects of the Unit of Effort in the Estimation of Harbor Porpoise By-catch in the Northeast Sink Gillnet Fishery
- Field Testing of Acoustic Reflective Gillnets in the Bay of Fundy- Potential Mitigative Tool to Reduce Harbour Porpoise By-Catch (Trippel *et al.* November 2000)
- Genetic Structure of Harbour Porpoise, *Phocoena phocoena,* Populations in the Northwest Atlantic Based on Mitochondrial and Nuclear Markers (Rosel *et al.* 1999)
- Bayesian Methods for Stock-Mixture Analysis from Genetic Characters (Pella and Masuda 2000)
- NMFS Sustainable Fisheries Division handout: Marine Mammal Closed Area Regulations
- NMFS Sustainable Fisheries Division handout: NE Multispecies Closed Area Regulations
- Public hearing document for Addendum V to Amendment 5 of the FMP for Atlantic Striped Bass (ASMFC 2000)
- ASMFC news release on emergency dogfish action (August 2000)

- Spiny Dogfish FMP Now in Effect (NOAA)
- Judge Upholds Federal Dogfish Plan (August 3, 2000) (NOAA)
- Spiny Dogfish Closure (NOAA)
- Period 2 Spiny Dogfish Closure (NOAA)
- Emergency Rule for Spiny Dogfish (NOAA)
- Monkfish Stock Assessment and Fishery Evaluation (SAFE) Report
- Guide to the Federal Management Regulations for Monkfish
- Monkfish Fishery Management Plan Question and Answer Fact Sheet (NOAA)
- Additional Monkfish Management Measures Effective May 1, 2000 (NOAA)
- Monkfish Regulations Approved (NOAA)
- Experimental Fisheries Discussion Items
- Preliminary Design Specifications Airmar Gillnet Pinger

ATTACHMENT C
Consensus Recommendations**

GOMTRT 1 (Page 5): When there is a take of a harbor porpoise, observers should check whether pingers are functioning on both sides of the actual take.

GOMTRT 2 (Page 5): To determine the proportion of deployed pingers, if any, that are not functioning, observers should randomly select a string and sample every pinger on that string. NMFS should provide notice of the change in protocol to gillnetters.

GOMTRT 3 (Page 5): To determine the representativeness of the observer program for the Northeast sink gillnet fishery, NMFS should determine what proportion of all active gillnet vessels are observed each year.

GOMTRT 4 (Page 5): The TRT requests that NMFS prepare a report on the number of observed vessels relative to the number of boats known to be in the Northeast sink gillnet fishery and report this information back to the TRT.

GOMTRT 5 (Page 6): Of those vessels suitable for observer coverage, those which were not observed in previous years should be prioritized for coverage in the subsequent year while keeping the selection protocol as random as practical.

GOMTRT 6 (Page 8): The TRT strongly recommends that a scientific experiment be conducted to compare the efficacy of reflective gillnets with that of standard gillnets equipped with pingers.

GOMTRT 7 (Page 9): In authorizing and/or conducting either the above experiment or an experiment on alternative frequency pingers, NMFS should utilize whatever approach is most expeditious and least burdensome.

GOMTRT 8 (Page 9): Should the reflective net experiment or an experiment on alternative frequency pingers provide sufficient evidence that the modified gear is effective in reducing harbor porpoise bycatch to a degree which is equivalent to or greater than the current pinger requirement in the HPTRP, NMFS should amend the HPTRP in a manner which allows fishermen to choose between conservation-equivalent strategies.

GOMTRT 9 (Page 11): The TRT recommends that NMFS implement an enhanced enforcement program in cooperation with the U.S. Coast Guard and the States.

GOMTRT 10 (Page 12): The TRT recommends that NMFS and NOAA General Counsel continue to develop a graduated schedule of penalties of sufficient gravity to deter non-compliance for all components of the TRP.

GOMTRT 11 (Page 12): The TRT recommends that NMFS notify permit holders about issues of non-compliance.

GOMTRT 12 (Page 12): The TRT recommends that NMFS, in cooperation with the States, establish an annual certification program for fishermen and their gear.

GOMTRT 13 (Page 14): The TRT will form a subcommittee which will review the current procedures and plans for mandatory fishing effort data reporting and make recommendations to the TRT on measures which might improve the utility of the data for monitoring the HPTRP.

GOMTRT 14 (Page 14): The TRT recommends that NMFS evaluate moving the southern boundary of the South of Cape Cod Closure area to include areas where there have been observed takes south of the existing boundary line.

GOMTRT 15 (Page 14): Within the next several months, NMFS should prepare for TRT consideration a proposal that would suggest how the appropriate groundfish closures that are currently in effect could be integrated under the single umbrella of the Take Reduction Plan with the current HPTRP regulations as a stand-alone set of regulations under the MMPA.

**Note: Recommendations are presented here in condensed form. See referenced page numbers in the body of the meeting summary for additional detail.